

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5014 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
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DIVISIONAL CONTROLLER

Versus

CHANDULAL G SOLANKI

Appearance:

1. Special Civil Application No. 5014 of 1989
MR HARDIK C RAWAL for Petitioner No. 1
RULE SERVED for Respondent No. 1
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 26/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Raval for the petitioner. Notice of rule issued by this court has been served upon the respondent but the respondent has not remained present before this Court either in person or

through any advocate and, therefore, the matter has been taken up for hearing in absence of the respondent.

By way of this petition, the petitioner has challenged the award made by the labour court concerned in Reference (LCR) NO. 1223 of 1987 dated 17th February, 1989 wherein the labour court concerned has directed the corporation to reinstate the respondent workman in service with continuity without back wages for the intervening period. While issuing rule in this petition on 22.1.1991, no stay has been granted by this Court against the reinstatement and as a consequence thereof, the respondent must have been reinstated in service. This fact has been made clear by the respondent in civil application no. 135 of 1994. Mr. Raval has submitted that the respondent has recovered fare of 200 kg. luggage from the passenger but has not issued ticket and that there was talk with the passenger that the amount will be adjusted by him subsequently. He has also submitted that the said passenger was examined in the departmental inquiry wherein he has clearly mentioned that there was some talk with the passenger about the adjustment of the amount of luggage recovered by the conductor. He has submitted that in view of this misconduct committed by the respondent workman, he was removed from service and the labour court had also observed that the misconduct has been proved. According to him, the labour court has erred in coming to the conclusion that it was mere negligence on the part of the respondent. According to him, it was not mere negligence but it was dishonesty and misappropriation of the funds of the corporation and therefore, the labour court ought not to have made an award of reinstatement in favour of the respondent workman. He has submitted that in view of these facts, the labour court ought not to have reinstated the workman. Alternatively, he has submitted that if the labour court was of the view that it was a negligence on the part of the respondent, then, for such negligence which was causing loss of revenue to the corporation, the labour court ought to have imposed some punishment over and above the denial of back wages for the intervening period.

I have considered the submissions made by Mr. Raval. I have also perused the award made by the labour court. Upon perusal of the award in question, it is clear that the labour court has found that the charge levelled against the respondent was serious in nature and the misconduct alleged against the respondent was found to have been proved against the respondent workman. The labour court has also found that there was some talk

between the conductor and the passenger concerned about the adjustment of the amount of luggage charges recovered from the passenger. In such case, therefore, while exercising the powers, according to my opinion, the labour court ought to have imposed some punishment having recurring effect so that the respondent may not commit such misconduct in future. According to my opinion, in such a case, mere denial of back wages cannot be considered to be the sufficient punishment looking to the misconduct committed by the respondent workman. In the facts and circumstances of the case, according to my opinion, some further punishment is required to be imposed upon the respondent workman. I am of the view that it would be just and proper if the two annual increments of the respondent workman with future effect are stopped by way of punishment. In the facts and circumstances of the case, since the respondent has already been reinstated in service pursuant to the award made by the labour court and also in view of the fact that no stay has been granted against the reinstatement while admitting this petition, therefore, it would not be just and proper to disturb the award of reinstatement without back wages made by the labour court.

For the reasons recorded hereinabove, this petition is partly allowed. The award made by the labour court concerned in Reference (LCA) No. 1223 of 1987 dated 17th February, 1989 is modified to the effect that the respondent shall have to undergo by way of punishment, stoppage of two annual increments with future effect. Rest of the award made by the labour court qua reinstatement without back wages is confirmed by this Court. Rule is made absolute in terms indicated hereinabove with no order as to costs.

26.3.2002 (H.K. Rathod, J.)

Vyas